IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

A. W. CORBUS, *Appellant*, *vs.* THE ALASKA TREADWELL GOLD MINING COMPANY.	No. 53.
CHARLES STEWART, *Appellant*, *vs.* THE WASHINGTON AND ALASKA STEAMSHIP COMPANY *et al.*	No. 71.
THE PACIFIC STEAM WHALING COMPANY, *Appellant*, *vs.* THE UNITED STATES.	No. 139.
THE PACIFIC COAST STEAMSHIP COMPANY, *Appellant*, *vs.* THE UNITED STATES.	Nos. 155, 156, and 157.

Appeals from the United States District Court for the District of Alaska.

Reply Brief for Appellants in Nos. 71, 139, 155, 156, and 157.

1.

In answer to the contentions of the United States that the license fees complained of are a part of a penal code for regulation and not a tax for revenue, and the power is therefore not derived from Article 1, section 8, but Article 4, section 3, of the Constitution, we beg to submit:

The annual license exacted in No. 53 is.....$1,875
The annual license exacted in No. 71 is..... 767
The annual license exacted in No. 139 is..... 4,702.36
And in Nos. 155, 156, and 157 (one Co.) ... 3,161.37

That where the license fee charged is in excess of the cost of issuing license and necessary regulation of the business, it is a tax.

Royall *vs.* Virginia, 116 U. S., 572.
Cooley on Const. Lim., sections 587, 495, and 201.
Cooley on Taxation, sections 532 and 592.

As to distinction between tax and license for regulation, see—

Dillon on Mun. Corp., 3d ed., sections 358, 359, and 768, and authorities cited.

As to the police power, see—

Cooley on Taxation, pp. 75, 605, 586, and 587.
Burroughs on Taxation, p. 509.

(2.) No regulation is provided for in the act and none was necessary as to many of the lines of busi-

ness required to be licensed, and the expense of issuing the license is paid by the applicant in addition to the fee.

II.

As to the contention that these license fees, if taxes, are local taxes intended to meet the expenses of governing the Territory, we submit:

1. There is nothing in the act to indicate any such purpose.

2. The legislation of the subsequent year appropriating a part of the license fees for school purposes, was passed after the fees were paid and the license issued in these cases and should have no bearing upon them.

3. That the license fees are to be paid to the clerk of the court which issues the license instead of to the collector of customs, we do not think supports the contention of the Government.

4. The fact remains, that they are paid *into the general Treasury of the United States*, and can be used for local purposes only, by subsequent appropriation by Congress.

5. The table submitted as an exhibit to counsel's brief, in order to show the cost of governing Alaska is more than the amount of revenue received, hardly tends to strengthen this case, as the charges for repairing United States revenue vessels, the expenses

of such vessels and cost of collecting customs, all of which were made in the collection of revenue for the general Treasury are charged to Alaska. But every cent of the cost of collecting the license fees and paying them into the Treasury, was borne by the applicants for licenses under the provisions of the act in question in these cases.

III.

(3.) As to the contention that the fees in these cases are not taxes in the proper sense of the word, but are the consideration which appellants, as foreign corporations, pay for the privilege of doing business in Alaska, we remark:

1. That the act by its terms applies to residents or citizens of Alaska as well as to persons or corporations residing or organized outside of that Territory, and we cannot see how such distinction as counsel claims can be made.

2. Are vessels owned by American citizens, enrolled, licensed, and taxed in one of the States, as "coast-wise vessels," or their owners, whether citizens or corporations of one of the States, foreign corporations when they seek to do business in Alaska; or do their licenses for the coast-wise trade protect them from any such charges under section 9, Article 1, of the Constitution, and sections 1954, 2793, 4220, and 4358, U. S. Revised Statutes? (See case of Huus *vs.* New York and Porto Rico Steamship Co., 182 U. S., 392, cited in original brief.)

3. If the fees are exacted for the reasons claimed, why should these vessels be charged $1.00 per ton, while other American vessels engaging in the *foreign trade* are required to pay only thirty cents per ton?

4. Again, attention is called to the fact that in the act of June 6, 1900, referred to by counsel, Congress, doubtless recognizing the unconstitunality and injustice of so much of section 460 of the act in controversy as it is claimed applied to the ocean and coast-wise vessels of appellants in Nos. 139, 155, 156, and 157, so amended it as to exclude from its provisions such vessels, when licensed or taxed elsewhere, as were the vessels of said appellants.

IV.

As to the jurisdiction of the United States District Court for the District of Alaska to grant the injunctions prayed for, we submit:

1. Both the bills in equity and the protests stated facts sufficient to bring the cases within the recognized grounds of equity cognizance. In addition to the unconstitutionality of the act in question, they all alleged that irreparable injury and a multiplicity of suits would result from the failure of the court to take jurisdiction and grant the relief asked. All of the authorities hold the collection of a tax may be enjoined when these facts exist. (Wilson *vs.* Lambert, 168 U. S., 611, citing Downs *vs.* Chicago, 78 U. S. (11 Wall.), 108; U. P

Ry. *vs.* Cheyenne, 113 U. S., 573; Ogden *vs.* Armstrong, 168 U. S., 224, and 2 Dill. Mun. Corp., 4 ed., 922; Davis *vs.* Wakelu, 156 U. S., 680; Cummings *vs.* Merchants' Natl. Bank, 101 U. S. (11 Otto), 153, and Dodge *vs.* Woolsey, 59 U. S. (18 How.), 331, cited in original brief.)

Respectfully submitted.

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